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APR 22 2005

U.S. DISTRICT COURT
WESTERN DISTRICT OF MASSACHUSETTS**UNITED STATES DISTRICT COURT
Western District of Massachusetts**_____
KEITH BRIAN ASKINS)

Plaintiff)

V.)

WILLIAM C. WERNICKI TRUCKING)

Defendant)

Civil Action No.: 04-30178-KPN

DEFENDANT WILLIAM C. WERNICKI
TRUCKING'S MEMORANDUM IN
IN SUPPORT OF RULE 37(a) MOTION
TO COMPEL

This case arises out of an alleged injury sustained by the plaintiff while the plaintiff was employed with the United States Postal Service. The plaintiff alleges that on September 22, 2001 while at the United States Postal Service bulk mail facility in Springfield, Massachusetts he stepped through a hole in the floor of the rear of a truck/trailer allegedly owned by the defendant causing the plaintiff to allegedly suffer injuries to his leg and knee. The defendant denies that the plaintiff was injured in the rear of a truck/trailer owned by it. The defendant also claims that the accident was proximately caused by the plaintiff's own negligence and not the negligence of the defendant.

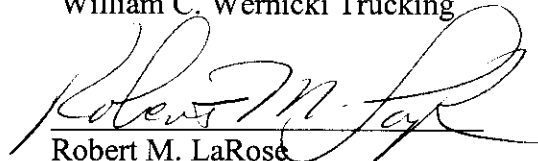
The defendant filed interrogatories pursuant to FED. R.CIV. P. 33 and request for production of documents pursuant to FED. R.CIV. P. 34 upon the plaintiff on January 19, 2005. The time period in which the plaintiff was to respond (30 days) expired on February 19, 2005. On March 15, 2005 the undersigned defendant's counsel wrote to the plaintiff's counsel asking the plaintiff's counsel to forward his client's responses to interrogatories and request for production in this case. (Copy of letter attached as Exhibit A) After receiving no response, the defendant's attorney wrote to plaintiff's counsel via certified return receipt mail notifying the plaintiff's counsel that the letter was to serve as a request pursuant to LR 37.1 for a discovery conference regarding his client's failure to respond. (Photocopy of letter and return receipt attached as Exhibits B and C). Opposing counsel has failed to respond to the request for a discovery conference within the seven (7) day period as set forth in the letter and LR 37.1(A).

The opposing party, to date, has not answered interrogatories and has not produced any of the requested documentation. The Court's scheduling order in this case requires that discovery be completed by August 8, 2005. The defendant is required to designate and disclose information regarding its trial experts by July 7, 2005. The plaintiff's failure to respond to discovery requests as set forth above has prejudiced the defendant in that it has been unable to schedule depositions of the plaintiff and witnesses due to the lack of the documentation requested and information sought in the interrogatories. As the discovery deadlines approach,

defendant does not have any further information from the plaintiff than it had at the beginning of this lawsuit.

For the above reasons, the defendant's motion for order compelling disclosure or discovery and sanctions should be granted.

ATTORNEY FOR THE DEFENDANT,
William C. Wernicki Trucking

A handwritten signature in black ink, appearing to read "Robert M. LaRose", is written over a horizontal line.

Robert M. LaRose
Russo, LaRose & Bresnahan
95 Glastonbury Boulevard, Ste. 400
Glastonbury, CT 06033
(860) 368-5070
BBO#543711

CERTIFICATE OF SERVICE

I, Robert M. LaRose, Esq., do hereby certify that a copy of this Memorandum in Support of Rule 37 Motion to Compel has been sent to the following counsel of record via first class mail on April 21, 2005, as follows:

Barry E. O'Connor, Esq
293 Bridge Street, Suite 326
Springfield, MA 11103

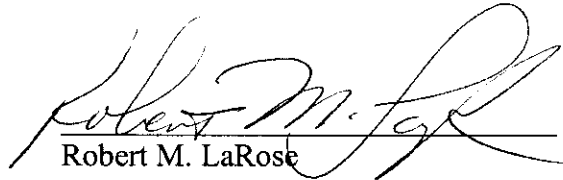

Robert M. LaRose

EXHIBIT A

RUSSO, LaROSE & BRESNAHAN

95 Glastonbury Boulevard, Suite 400

Glastonbury, CT 06033

Tel: (860)-368-5070

Fax: (860)-368-5069

Kevin M. Bresnahan†

Robert M. LaRose†

Charlene M. Russo

† Also Licensed in Massachusetts

March 15, 2005

Barry E. O'Connor, Esq
293 Bridge Street, Suite 326
Springfield, MA 11103

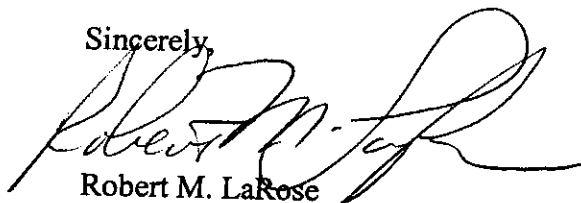
Re: Keith Brian Askins v. William C. Wernicki Trucking
Doc. #: 04-30178-KPN

Dear Attorney O'Connor:

I have not received your client's responses to interrogatories and request for production sent to you by letter dated January 19, 2005. Could you please have your client's responses to me within a week so that I can begin depositions in this matter.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,



Robert M. LaRose

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EXHIBIT B

RUSSO, LaROSE & BRESNAHAN

95 Glastonbury Boulevard, Suite 400

Glastonbury, CT 06033

Tel: (860)-368-5070

Fax: (860)-368-5069

Kevin M. Bresnahan†

Robert M. LaRose†

Charlene M. Russo

† Also Licensed in Massachusetts

March 31, 2005

CERTIFIED RETURN RECEIPT REQUESTED

Barry E. O'Connor, Esq
293 Bridge Street, Suite 326
Springfield, MA 11103

Re: Keith Brian Askins v. William C. Wernicki Trucking
Doc. #: 04-30178-KPN

Dear Attorney O'Connor:

I have not heard from you with regards to my letter dated March 15, 2005 in which I requested that your client supply me with responses to interrogatories and request for production within a week so that I could begin depositions in this matter. Please let this letter serve as a request pursuant to Local Rule 37.1 for a discovery conference regarding your client's failure to respond. I ask that you call me pursuant to Local Rule 37.1 to discuss this discovery dispute. Your failure to respond to this request for a discovery conference within seven (7) days will result in the filing of a motion for order compelling disclosure and for appropriate sanctions pursuant to Federal Rules of Civil Procedure Rule 37.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,


Robert M. LaRose

jo

cc: Lydia Wilson

[illegible]